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O.P.No.408 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **05.09.2023**

CORAM

THE HONOURABLE MS.JUSTICE R.N.MANJULA
O.P.No.408 of 2023

Mrs.K.Senthamizh Selvi

... Petitioner

PRAYER: Original Petition is filed seeking permission of Court under Section 8(2) of Hindu Minority and Guardianship Act 1956 r/w Order XXI Rule 2 & 3 of Original Side Rules to the petitioner as natural guardian to sell the minor's share in the property; to allow the petitioner to deposit the minor's half share in the 1/4th share in the total sale consideration in the Fixed Deposit of any one of the Nationalised Bank and to allow the petitioner to withdraw the interest of the amount deposited from the Nationalised Bank once in three months till the minor attains majority.

For Petitioner : Mr.N.Ramachandran

ORDER

This Original Petition has been filed seeking permission to the petitioner as natural guardian to sell the minor's share in the property; to allow the petitioner to deposit the minor's half share in the 1/4th share in the total sale consideration in any one of the Nationalised Bank and to allow the petitioner to withdraw the interest of the amount deposited from the



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Nationalised Bank once in three months till the minor attains majority.

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2.The averments in the Petition are as follows:-

The petition mentioned property is a self acquired property of one Chandrika. The said Chandrika died on 10.07.2013 by leaving behind her husband, son and two daughters as her legal heirs. The petitioner is the daughter-in-law of the deceased Chandrika. The petitioner's husband is the son of Chandrika who also died on 17.05.2021. Subsequent to the death of Chandrika, her husband, son and two daughters were entitled to inherit $\frac{1}{4}$ share each in the petition mentioned property. G.Kamesh who is the son of Chandrika has got $\frac{1}{4}$ share and he also died subsequently by leaving behind his wife and minor son as his legal heirs. Hence, the petitioner and her minor son will become entitled to inherit her husband's $\frac{1}{4}$ share. Since other family members have chosen to sell the suit property for investing the same in a better manner, the petitioner has filed this petition seeking permission to sell away the minor's share in the property. The petitioner has also given an undertaking that the sale proceeds in respect of minor's share will be deposited in the Fixed Deposit of any Nationalised Bank until the minor attains majority.

3. The petitioner examined herself as P.W.1 and exhibits P1 to P14



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were marked.

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4. Ex.P2 would show that the petition mentioned property was purchased by the mother-in-law of the petitioner viz., Chandrika on 30.07.1979. The said Chandrika died on 10.07.2013 by leaving behind her husband, son and two daughters as her legal heirs. The legal heir certificate is marked as Ex.P7. The death certificate of G.Kamesh is marked as Ex.P4. The birth certificate of the minor son Manesh Sai which is marked as Ex.P1 would show that the petitioner and the deceased G.Kamesh are the parents of the minor son. The other sharers of the petition mentioned property have thought it fit to sell away the property to make a better investment. Since the minor's interest is also involved, the petitioner has filed this petition. The Sale Agreement in this regard entered in favour of one Saravanan dated 26.03.2023 for selling the above property has been marked as Ex.P3.

5. Paper publication effected in one issue of Tamil Daily “Makkal Kural” dated 19.08.2023 did not attract any objectors.



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6. Taking into consideration of the necessity to sell the property and also considering the interest of the minor child Manesh Sai and by taking into account of the undertaking given by the petitioner to deposit the share of the minor in the Fixed Deposit of any Nationalised Bank, I feel permission should be granted to the petitioner.

7. Accordingly, this Original Petition is allowed on the following terms:

i) The petitioner is permitted to sell the share of the minor in the property described in the schedule.

ii) Such permission is subject to the condition that minor's share in the sale proceeds of the petition mentioned property should be deposited in a Fixed Deposit account established in a Nationalized Bank in the name of the minor. Such fixed deposit shall be maintained until the minor attains the age of majority. The petitioner is also permitted to withdraw the interest once in three months to meet out the expenses of education and for the betterment and the living of minor till he attains majority.

iii) Upon complying with the above directions, an affidavit of compliance shall be filed in the Registry.

iv) The minor is granted leave to apply for release of the fixed deposit



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upon attaining the age of majority.

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APPENDIX

Petitioner's Witness :

P.W.1 – Mrs.K.Senthamizh Selvi

Documents marked :

<i>Exhibits</i>	<i>Documents</i>
P1	the computer generated birth certificate of minor K.Manesh Sai.
P2	the photocopy of the sale deed dated 30.07.1979 executed in favour of G.Chandrika.
P3	the photocopy of the sale agreement dated 26.03.2023 between D.Saravanan as first party and S.Gangadharan & three others as second party.
P4	the computer generated death certificate of G.Kamesh.
P5	the computer generated legal heir certificate of G.Kamesh.
P6	the computer generated death certificate of G.Chandrika.
P7	the photocopy of the legal heirship certificate of G.Chandrika.
P8	the photocopy of the Aadhaar card of Minor K.Manesh Sai.
P9	the photocopy of the petitioner's Aadhaar Card.
P10	the photocopy of the property tax assessment card in respect of the property standing in the name of G.Chandrika.
P11	the computer generated encumbrance certificate for the period from 01.01.1975 to 21.09.2022 in respect of the property mentioned in the petition.
P12	the paper publication effected in Tamil Daily "Makkal Kural" dated 19.08.2023.
P13	the paper publication effected in English Daily "Trinity Mirror" dated 19.08.2023.
P14	the declaration of willingness of the petitioner to accept the office of guardian of the person and property in respect of minor K.Manesh Sai.

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R.N.MANJULA, J.

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